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45 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
78 EDWARD ALVARADO, *et al.*, No. C 04-0098 SI

9 Plaintiffs,

10 v.

11 FEDEX CORPORATION,

12 Defendant.

**ORDER GRANTING PLAINTIFFS'  
MOTION TO STRIKE DEFENDANTS'  
UNTIMELY ANSWER; DENYING  
DEFENDANT'S MOTION FOR  
ENLARGEMENT OF TIME TO FILE AN  
ANSWER; AND STRIKING DOCKET  
NO. 653**

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14 On January 12, 2007, the Court heard argument on plaintiffs' motion to strike defendant's  
15 answer, and on defendant's motion for an enlargement of time to file an answer. For the reasons set  
16 forth below, the Court GRANTS plaintiffs' motion and DENIES defendant's motion, and STRIKES the  
17 answer filed on November 22, 2006.

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**DISCUSSION**

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20 Although plaintiffs filed a first amended complaint on January 9, 2004, defendant never filed an  
21 answer to it. Nearly three years later, after extensive motion practice and two jury trials in this action,  
22 defendant filed a 40 page answer asserting 34 affirmative defenses. Plaintiffs have moved to strike the  
23 untimely answer. Defendant, after having already filed the answer and after receiving plaintiffs' motion  
24 to strike it, filed a motion for an "enlargement of time" to file an answer.

25 The Court has discretion under Federal Rule of Civil Procedure 6(b) to allow the filing of an  
26 untimely answer "where the failure to act was the result of excusable neglect." Fed. R. Civ. P. 6(b). The  
27 Court finds that defendant has not established excusable neglect. Defendant is well-resourced, has  
28 litigated this case vigorously, and has filed numerous pretrial motions, including over a dozen motions

For the Northern District of California

1 for summary judgment. The fact that the procedural history of this case is somewhat unusual because  
2 the case originally was part of the *Satchell* action does not supply “excusable neglect,” particularly when  
3 the late answer is filed after almost three years of protracted litigation and two jury trials.

4 The Court further finds that the filing of a late answer would prejudice plaintiffs because of the  
5 advanced stage of this litigation. Defendant states that all of the defenses asserted in the answer have  
6 been raised at some point during this litigation, and thus plaintiffs will not suffer any harm. If defendant  
7 is correct, the late answer is surplusage and defendant will not be prejudiced because it has raised those  
8 defenses and preserved them for appeal. However, if defendant has actually asserted new defenses, as  
9 plaintiffs claim, plaintiffs would be prejudiced by their late assertion.<sup>1</sup>

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## CONCLUSION

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For the Northern District of California  
Dated: January 12, 2007



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SUSAN ILLSTON  
United States District Judge

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